

REFORMS IN FAMILY LAW (CUSTODY & GUARDIANSHIP)

GUARDIANSHIP OF WOMEN (HINDU LAW)

ANCIENT APPROACH

- A woman should be guarded during her lifetime and duty is of the Male member of the family.
- Wife was considered to be the property of the husband.
- Woman like slaves, should not have the right of freedom.

HINDU MINORITY & GUARDIANSHIP ACT, 1956

Section 6

(A father and after him, the mother, is to be the guardian of his wife and a husband to be the guardian of his wife.)

JUDICIAL APPROACH

The Indian Courts have repeatedly emphasized that once a girl attains majority, she has the full autonomy of herself.

CASE LAW DEVELOPMENT

1. Lata Singh v. State of U.P. AIR 2006 SC 2522.
(Two consenting adults could marry the life partner of their choice.)

2. S. Khushboo v. V. Kannimal AIR 2010 SC
3196.

(Morality and Criminality are not Co-
extensive)

**3. Shakti Vahini v. Union of India AIR 2018 SC
1601**

**(Two consenting adults could marry the
person of their choice. The right is vested in
them by the Constitution of India)**

NATURAL GUARDIAN OF ADOPTIVE SON

**Section 7, Hindu Minority & Guardianship Act,
1956**

**(The natural Guardianship of an adopted son,
who is a minor passes on adoption, to the
adoptive father and after him to the adoptive
mother)**

LAW COMMISSION OF INDIA

257th report – *“Reforms in Guardianship and custody Laws in India (2015)”*

(recommended the desired changes in the language of the section, and to include adoptive girl as well)

MUSLIM LAW

The Shariat Application Act, 1937 provides that in the matter of custody and Guardianship, the muslim personal Law shall be applicable.

Who is a minor?

- Section 3, The Indian Majority Act, 1875 – (a person of eighteen years of age is a major)
- Section 2(a) – (The provisions contained in the Act, 1875 are not to affect the capacity of a person to act in the matters of marriage, dower, divorce and adoption)
- Section 2 (b) – (it shall not interfere with the religion or religious rites of the citizens of India)

Age of majority (puberty) under Muslim law

- The Shia School – at the age of fifteen (15) yrs. In case of boy
 - At the age of nine (9) yrs. In case of girl
- The Hanafi School – at the age of twelve (12) yrs. in case of boy
 - At the age of nine (9) yrs. In case of girl

VIEWS OF MUSLIM SCHOLARS

- Syed Ameer Ali – age of the majority should be same
- Mulla – age of majority should be fifteen years of age (where the evidence of puberty is not available)

Age of majority in different matters

- In the matter of marriage, dower & divorce – age of puberty
- In the matter of property- age of eighteen (18) yrs.